

COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME
UNDER 37 C.F.R. 1.136(a) (Small Entity)

Docket No.

In Re Application Of:

HEKAL, Ihab M.

SEP 18 2006

Application No.

10796,145

Filing Date

03/10/2004

Examiner

JOHNSON, Edward M.

Customer No.

25628

Group Art Unit

1754

Confirmation No.

2048

Invention:

OXYGEN ABSORBER

TO THE COMMISSIONER FOR PATENTS:

This combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:

William H. Holt
Signature

Dated: September 14, 2006

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Invention:

OXYGEN ABSORBER

09/19/2006 CNEGA1 00000000 10796145
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02 FC:2253
COMMISSIONER FOR PATENTS

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This is a combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing an Appeal Brief.

Applicant(s) hereby request(s) an extension of time of (check desired time period):

☐ One month ☐ Two months ☒ Three months ☐ Four months ☐ Five months

from: June 14, 2006 until: September 14, 2006
Date Date

The fee for the Appeal Brief and Extension of Time has been calculated as shown below:

Fee for Appeal Brief: \$250.00

Fee for Extension of Time: \$510.00

TOTAL FEE FOR APPEAL BRIEF AND EXTENSION OF TIME: \$760.00

The fee for the Appeal Brief and extension of time is to be paid as follows:

☒ A check in the amount of **\$760.00** for the Appeal Brief and extension of time is enclosed.

☐ Please charge Deposit Account No. _____ in the amount of _____

☐ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. _____

☐ Any additional filing fees required under 37 C.F.R. 1.16.

☐ Any patent application processing fees under 37 CFR 1.17.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before
THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN THE MATTER OF:

Serial No.: 10/796,145

Group Art Unit: 1754

Filed: March 10, 2004

Examiner: JOHNSON, Edward M.

Applicant: HEKAL, Ihab M.

Title: OXYGEN ABSORBER

APPEAL BRIEF

Commissioner for Patents
P.O. BOX 1450
Alexandria, Virginia 22313-1450

Sir:

This is an appeal from the Examiner's FINAL rejection of
claims 1-14, 16 and 19.

(1) Real Party in Interest

This application and the inventions disclosed therein are the
property of the inventor/applicant, Dr. Ihab M. Hekal.

(2) Related Appeals and Interferences

There are no known appeals or interferences which will
directly affect or be directly affected by or have a bearing on the
Board's decision in this appeal.

(3) Status of Claims

Claims 1-14, 16 and 19 are present in this appeal. Claim 15
was cancelled and written in independent form as allowed claim 17.
Claims 17 and 18 stand allowed. The appealed claims are presented
in the accompanying Appendix.

(4) Status of Amendments

No Amendments have been filed subsequent to the FINAL rejection.

(5) Summary of Claimed Subject Matter

Claim 1:

Parent claim 1 defines an oxygen absorber comprising an iron powder, "and a first layer coated on a surface of the iron powder, said first layer being formed of iron chloride." See: (1) page 3, lines 16-19; (2) page 4, lines 23-26; and (3) page 6, lines 17-30.

Claim 2:

This claim further defines the oxygen absorber of claim 1 as comprising a matrix material being filled with the iron powder that is covered with the first layer (of iron chloride). See: (1) page 3, lines 19-22; (2) page 4, lines 13-18; and (3) page 7, lines 22-32.

Claim 3:

This claim defines a preferred iron powder as being "sponge iron powder with porous surface." See: (1) page 5, lines 20-25+.

Claim 4: See page 4, lines 3-7.

Claim 5: See page 4, lines 3-7.

Claim 6: See page 6, line 31 to page 7, line 13.

Claim 7: See page 7, lines 6-13.

Claim 8: See page 4, lines 8-12.

Claim 9: See page 4, lines 13-16.

Claim 10: See page 4, lines 113-18.

Claim 11: See page 7, lines 14-21.

Claim 12: See page 7, line 33 to page 8, line 7.

Claim 13: This is an independent claim directed to a method of manufacturing the oxygen absorber of Claim 1+. See Example 1, page 8, line 30 to page 9, line 4.

Claim 14: See Example 1, page 8, line 30 to page 9, line 4.

Claim 16: See page 7, lines 14-21.

Claim 19: See page 8, lines 18-28.

(6) Grounds of Rejection to be Reviewed on Appeal

1. Claims 1-13, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al. US 5,241,149.

2. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe '149 in view of Teumac et al. US 6,465,065.

(7) Argument

ISSUE 1:

Are claims 1-13, 16 and 19 properly rejected over Watanabe et al?

In the Final rejection at paragraph 2, line 7, the Examiner ADMITS, "Watanabe fails to disclose a coated layer." (Emphasis supplied.) The patent discloses a different type of oxygen

absorber wherein the material is enclosed in a packet comprised of "laminated layers of microwave-proof and packing material...." (Final Rejection, last 4 lines on page 2.) With all due respect, applicant submits that there is no teaching, or suggestion, of the invention defined in applicant's parent claims 1 and the claims depending therefrom. Regarding parent claim 13, the Examiner has made no apparent effort to show that Watanabe et al. teach or suggest Applicant's claimed steps of taking an iron powder and "forming a first layer formed of iron chloride on a surface of the iron powder." Applicant's invention relates to taking iron powder and forming a layer of iron chloride thereon, and the Examiner admits that the cited patent "fails to disclose" what is claimed. By coating or forming the layer of iron chloride upon a surface of the iron powder, Applicant's material is more active than that of Watanabe et al. and maintains that activity when mixed with matrix material because the coated layer does not become separated from the underlying iron powder.

Accordingly, reversal of the rejection is in order.

ISSUE 2:

Does Teumac et al. overcome the failings of Watanabe et al.?

Claim 14 depends from parent claim 13. As pointed out above, Watanabe et al. fail to teach or suggest the method of claim 13 so that claim 14 is considered to be allowable therewith. Applicant's claimed method, as defined in claim 14, comprises the steps of

taking iron powder, coating it with a first layer of iron chloride (not taught or suggested by Watanabe *et al.*), then mixing it with a matrix material, melting the mixture, extruding it into a strand, pelletizing it, and molding the resulting pellets -- resulting in an oxygen absorber which comprises iron powder having a first layer of iron chloride formed thereon. Thus, it is readily apparent that Teumac *et al.*, not only fail to teach or suggest the shortcomings of Watanabe *et al.* with regard to the steps of parent claim 13, but also fail to teach or suggest the sequence of steps enumerated in dependent claim 14. Accordingly, claim 14 is deemed to be allowable with parent claim 13.

In view of the foregoing remarks, applicant's independent claims 1 and 13 are deemed to be allowable as well as claims 2-12 depending from claim 1, and claims 14, 16 and 19 depending from claim 13.

Conclusion

Applicant respectfully submits that the cited art fails to teach or suggest the claimed invention. Accordingly, the Examiner's rejection of claims 1-14, 16 and 19 is deemed to be in

error, and reversal thereof is courteously solicited.

Respectfully submitted,

September 14, 2006

A handwritten signature in cursive script, appearing to read "William H. Holt".

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(8) APPENDIX
Claims on Appeal

1. An oxygen absorber comprising:
an iron powder, and
a first layer coated on a surface of the iron powder, said first layer being formed of iron chloride.
2. An oxygen absorber according to claim 1, further comprising a matrix material filled with the iron powder covered with the first layer.
3. An oxygen absorber according to claim 1, wherein said iron powder is sponge iron powder with porous surface.
4. An oxygen absorber according to claim 1, wherein said iron powder has an average diameter of less than 100 micrometers.
5. An oxygen absorber according to claim 1, wherein said iron powder is carbonyl iron powder with an average diameter of less than 20 micrometers.
6. An oxygen absorber according to claim 1, wherein said first layer is formed of at least one of anhydrous ferric chloride and ferrous chloride.
7. An oxygen absorber according to claim 1, wherein said first layer is coated on the iron powder such that a ratio of chloride to iron is 0.1% to 10% by weight.
8. An oxygen absorber according to claim 1, wherein said

first layer has a thickness of less than 100 nm.

9. An oxygen absorber according to claim 2, wherein said matrix material is a plastic having a melting point of 80°C to 300°C.

10. An oxygen absorber according to claim 2, wherein said matrix material is filled with the iron powder at 50% to 90% by weight.

11. An oxygen absorber according to claim 1, further comprising a second layer coated on the first layer formed on the surface of the iron powder and formed of iron chloride.

12. An oxygen absorber according to claim 11, wherein said second layer is formed of at least one of anhydrous ferric chloride, ferrous chloride hexahydrate, ferrous chloride, and ferrous chloride tetrahydrate.

13. A method of manufacturing an oxygen absorber, comprising the steps of:

preparing iron powder, and

forming a first layer formed of iron chloride on a surface of the iron powder.

14. A method of manufacturing an oxygen absorber according to claim 13, further comprising the step of mixing the iron powder and a matrix material, melting the mixture of the iron powder and the

matrix material, extruding the molten mixture into a strand, pelletizing the extruded strand, and molding the pellet into a predetermined shape.

16. A method of manufacturing an oxygen absorber according to claim 13, further comprising the step of forming a second layer formed of iron chloride on the first layer formed on the surface of the iron powder.

19. A method as defined in claim 13 including the step of mixing said oxygen absorber with other plastic material, and forming a container therefrom, wherein the oxygen absorber functions as a barrier against the passage of oxygen.